

Forced Marriages

May a father force his virgin daughter who attained puberty to marry?

Two well-known opinions in this regard are reported from Ahmad:

1. That he may compel her. This is also the opinion of Malik, ash-Shafi'i, and others; and
2. That he may not. This is also the opinion of Abu Hanifah and others, and is the correct one.

People have differed as to the reason permitting the compulsion - whether it is virginity, the daughter being under-aged, or a combination of both. The closest opinion to the truth is her being under-aged, whereas no one can compel a grown-up virgin in marriage. Abu Hurayrah, *radiallahu 'anhu*, reported that the Prophet, *sallallahu 'alayhi wa sallam*, said:

"A non-virgin woman may not be married without her command, and a virgin may not be married without her permission; and enough permission for her is to remain silent (because of her natural shyness)." [Al-Bukhari, Muslim, and others]

Thus the Prophet, *sallallahu 'alayhi wa sallam*, prohibits forcing a virgin in marriage without her permission, whether it be her father or someone else. Furthermore, 'A'ishah, *radiallahu 'anha*, said that she asked the Prophet, *sallallahu 'alayhi wa sallam*, "In the case of a young girl whose parents marry her, should her permission be sought or not?" He replied, *"Yes, she must give her permission."* She then said, "But a virgin will be shy, O Allaah's Messenger." He answered, *"Her silence is [considered as] her permission."* [Al-Bukhari, Muslim, and others]

This applies to the father as well as others. Furthermore, Islam does not give the father the right to use any of her wealth without her permission, how then could he be allowed to decide, without her permission, how her body (which is more important than her wealth) is to be used, specially when she disagrees to that and is mature to decide for herself?

Also, there is evidence and consensus in Islam to restrict an underage person's free control of his wealth or person. However, to make a virginity a reason for the restriction contradicts the Islamic basis.

As for the difference between the non-virgin and virgin in the *hadith* of the Prophet, *sallallahu 'alayhi wa sallam*, it is not a differentiation between compulsion and non-compulsion; the difference between the two cases is that (a) the former gives her instructions for the marriage whereas the latter gives permission, and that (b) the virgin's silence counts as a permission.

The reason for this is that a virgin would be shy to discuss the matter of marriage, so she is not proposed to directly; rather, her *wali* (guardian) is approached, he takes her permission, and then she gives him the permission not the command to marry her. And as for a non-virgin, she would not have the shyness of virginity anymore; thus she can discuss the matter of her marriage, she can be proposed to, and she gives the command to her walee to perform the marriage, and he must obey her.

Thus the *wali* is command-executor in the case of the non-virgin, and is permission-seeker in the case of the virgin. This is what the Prophet's words indicate.

As for compelling her to marry despite her loathing to do so, this would contradict the fundamentals and reason. Allah, *ta'ala*, did not permit a *wali* to force her to sell or rent her property without her permission. Neither did He permit him to force her to eat or drink or wear that which she does not wish. How would He then oblige her to accompany and copulate with a person whose company she hates - at the time when Allah, *ta'ala*, has sent between the two spouses love and mercy? If such company happens despite her hatred and repulsion, where is the love and mercy?